Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-819

EDWARD V. REGAN, Individually and as County Executive of Erie County; RAYMOND F. GALLAGHER, as Chairman of the Erie County Legislature; ALFREDA W. SLOMINSKI, as Comptroller of Erie County; FRED J. BUSCAGLIA, as Commissioner of the Erie County Department of Social Services; ERIE COUNTY LEGISLATURE; COUNTY OF ERIE; and BARRY VAN LARE,

Appellants,

against

PHILIP L. TOIA, Individually and as Commissioner of the New York State Department of Social Services; HUGH L. CAREY, Individually and as Governor of the State of New York; ARTHUR LEVITT, Individually and as Comptroller of the State of New York; JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York; PETER GOLDMARK, Individually and as Director of the Budget of the State of New York; THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; and PEOPLE OF THE STATE OF NEW YORK,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK.

JURISDICTIONAL STATEMENT

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No. .....

EDWARD V. REGAN, Individually and as County Executive of Erie County, ERIE COUNTY LEGISLATURE, and COUNTY OF ERIE,

Appellants,

vs.

PHILIP L. TOIA, Individually and as Commissioner of Social Services of the State of New York, HUGH L. CAREY, Individually and as Governor of the State of New York, ARTHUR LEVITT, Individually and as Comptroller of the State of New York, JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York, PETER GOLDMARK, Individually and as Director of the Budget of the State of New York,

Appellees.

On Appeal From The Court of Appeals
Of New York

JURISDICTIONAL STATEMENT

Opinions Below

An opinion was delivered by each of the New York state courts that heard the case, the Supreme Court, the Appellate Division, and the Court of Appeals. The Court of Appeals opinion is reported at 40 N.Y. 2d 837 and the Appellate Division opinion is reported at 54 A.D. 2d 46. The opinion of Erie County Supreme Court has not been reported as yet. All

three opinions are appended hereto. The opinion of the Supreme Court is set forth at pages 26a through 29a of the Appendix, the opinion of the Appellate Division at pages 9a through 25a, and the opinion of the Court of Appeals at pages 5a through 8a.

Jurisdiction

This proceeding was commenced by the New York State Commissioner of Social Services under Article 78 of the New York Civil Practice Law and Rules to compel the County Executive and County Legislature of Erie County to appropriate and expend funds for the local share of certain social welfare programs pursuant to provisions of the New York Social Services Law. By affirmative defense and counterclaim the County Executive, in his official capacity and also as a citizen and taxpayer of Erie County, and the County Legislature challenged the constitutionality of those statutory provisions as repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

In an opinion dated August 31, 1976, the court of first instance, the Supreme Court of the State of New York in Erie County, sustained the validity of the statutory provisions in question. Judgment pursuant to that opinion was entered on September 2, 1976. A notice of appeal to the Appellate Division of the Supreme Court of the State of New York was served and filed the same day, and in an opinion and order entered on September 8, 1976, that court upheld the judgment of the lower court and granted permission to appeal to the New York Court of Appeals. By order entered September 17, 1976, the Court of Appeals affirmed the order of the Appellate Division.

A notice of appeal to the Supreme Court of the United States was filed in the office of the Erie County Clerk (as clerk of the Supreme Court of the State of New York in Erie County) on October 18, 1976. An amended notice of appeal was filed in the same office on December 10, 1976, for the purpose of adding appellant Van Lare and appellee People of the State of New York.

Jurisdiction of this appeal is conferred upon the Supreme Court of the United States by 28 U.S.C. § 1257(2). It is an appeal from a judgment of the highest court of the State of New York; it draws in question the validity of provisions of the New York Social Services Law as repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution; and the decision of that court was in favor of their validity.

Questions Presented

The provisions of the New York Social Services Law cited above impose upon the county governments of the State 50% of the non-federal costs of the Aid to Dependent Children, Medical Assistance, Day Care, and Home Relief Programs within their respective boundaries. The scope and costs of the programs are controlled by eligibility criteria and benefit levels determined exclusively by the State. The flat 50% funding formula takes no account of wide variations among the counties in relative levels of welfare need and taxable resources. These are inversely related. The result is a highly unequal and regressive pattern of local taxation for welfare, casting the heaviest burden upon the taxpayers of the poorest counties. The tax rate per $1,000 of full real property valuation to support these welfare programs in Erie County is more than twice that in wealthier counties, which enjoy both

higher per capita real property valuation and higher per capita income than Erie County. Since the taxing capacity of county governments is strictly limited by state law and economic conditions over which they have no control, the disproportionate welfare tax burden imposed upon the poorer counties also operates to deprive their residents of an equitable level of the essential services provided by county governments.

The question presented is whether this method, chosen by the state to finance its welfare programs, comports with the due process and equal protection clauses of the Fourteenth Amendme t to the United States Constitution. More particularly, since it is indisputable that this method of financing casts a disproportionate burden upon the residents and taxpayers of Erie County and the other poorer counties of the state, the question is whether it is justified by any rational basis.

Statutes Involved

This appeal draws in question the validity of those provisions of the New York Social Services Law that, where read together, impose upon county governments a flat 50% of the non-federal costs of the Aid to Dependent Children, Medical Assistance, Day Care, and Home Relief Programs.

The text of the statutory provisions in question is set forth in book 52A of *McKinney's Consolidated Laws of New York, Annotated*, and in the appendix at page 53a.

The New York State Social Services Law provides for the establishment of various programs as follows:

(a) Aid to dependent children, §344;

(b) Medical Assistance, §365;

(c) Day care, §410(subd.1); and

(d) Home relief, §§131-a(subd.1) and 157(subd.1).

General directions to appropriate and expend funds for these programs are provided for in the New York Social Services Law by:

(a) Aid to dependent children, §356;

(b) Medical assistance program, §365(subd.1);

(c) Day care program, §410(subd.1 and 2); and

(d) Home relief, §§93 and 131-a(subd.1).

The State reimbursement formula is set forth in the Social Services Law as follows:

(a) Aid to dependent children, §153(subd.1[d] and [e]);

(b) Medical assistance, §368-a(subd.1[d]);

(c) Day care program, §410-c(subd.1[a]); and

(d) Home relief, §153(subd.1[d] and [e]).

In addition to the above statutes, New York Social Services Law §§62, 69, 88 and 90 place general responsibility upon each county welfare district for the assistance and care of persons in such district who are in need of public assistance and care, and also mandate the appropriation of necessary funds for such purpose.

Pertinent Federal statutes are:

(a) 42 U.S.C. §601, which is the Federal provision for an aid to dependent children program;

(b) 42 U.S.C. §1396, which establishes grants for medical assistance programs; and

(c) 42 U.S.C. §1397, which establishes grants for day care programs.

The First and Fourteenth Amendments of the United States Constitution are also involved.

Statement of the Case

Appellants challenge the method chosen by the State of New York to finance four welfare programs, known as the Home Relief, Aid to Dependent Children, Medical Assistance, and Day Care Programs. The first mentioned program has been created solely by state law and is supported entirely by state and local funds; the other three have been created by the State pursuant to the U.S. Social Security Act and are federally assisted.* All four programs are defined and established by the New York Social Services Law, which provides for uniform eligibility criteria and benefit levels, and vests in the State Commissioner of Social Services broad authority over administration of the programs throughout the state, leaving the day to day administration to the localities subject to state supervision and control. The Social Services Law requires the counties to appropriate and expend all funds necessary to meet the costs of the programs,** but it directs the State to reimburse or advance to the counties the amount of federal funds received on account of such expenditures, and 50% of the balance.*** Thus, the State has imposed on county governments and county taxpayers 50% of the non-federal costs of the programs, and to finance its welfare programs the state has in effect classified its taxpayers according to county of residence.

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* The Aid to Dependent Children Program is provided for by 42 U.S.C. § 601 *et seq.*; the Medical Assistance Program by 42 U.S.C. § 1396 *et seq.*; and the Day Care Program by 42 U.S.C. § 1397 *et seq.*

** New York Social Services Law §§ 62, 69, 88, 90, 93, 131-a (subd. 1), 356, 365 (subd. 1) and 410 (subd. 1 and 2).

*** New York Social Services Law §§ 153 (subd. 1 [d] and [e]), 368-a (subd. 1 [d]), 410-c (subd. 1 [a]).

The only significant tax that the counties can employ to meet rising welfare costs is the real property tax. The rate at which county taxpayers are taxed to support welfare programs is determined by two principal factors, welfare burden and tax base. Welfare burden is dependent mainly upon the number of poor people in the county requiring assistance under the programs. The tax base consists of the value of real property in the county. Both absolutely and per capita, these two factors vary widely from county to county in an inverse relationship. Thus the poorer the county and its taxpayers the greater the tax burden cast upon them by the State's method of financing welfare.

The table below sets forth the population, welfare burden (local share) and full value of taxable real property in Erie County and each of the other five urban counties.*

1975

	Population	*Welfare Burden (Local Share)*	*Full Valuation of Taxable Property*
Erie County	1,120,100	51,209,535	8,236,346,864
Monroe County	767,500	36,464,915	6,919,690,090
Nassau County	1,428,500	58,101,122	18,832,291,810
Onondaga County	474,700	22,005,680	3,639,362,738
Suffolk County	1,341,700	52,367,994	14,726,911,459
Westchester County	924,000	57,701,121	12,796,954,313

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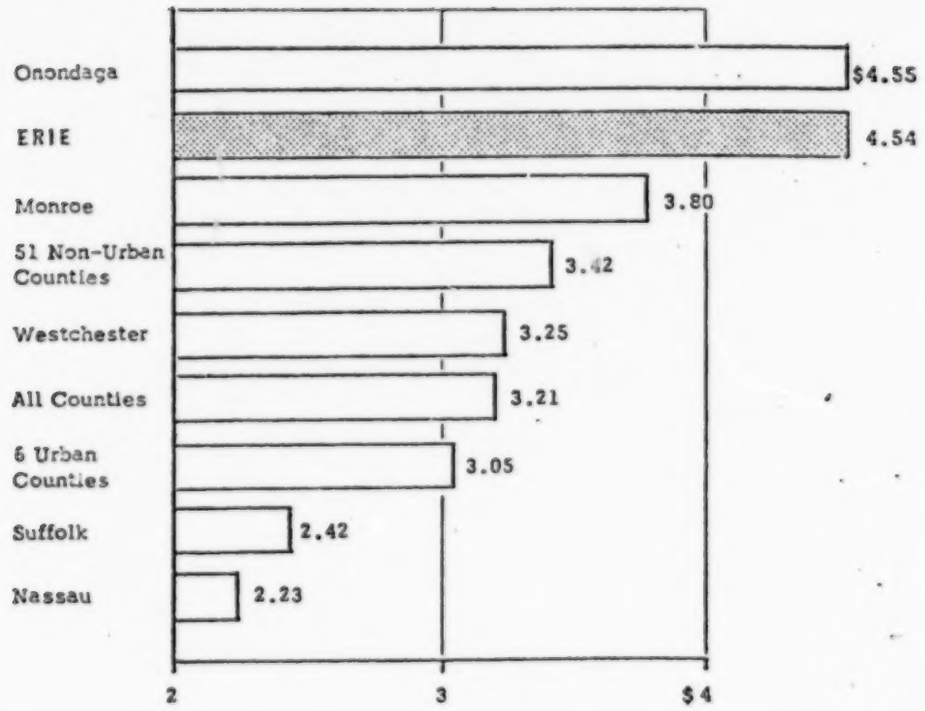
* The six urban counties of the state are recognized a class by the state Commissioner of Social Services, and they are fairly comparable in terms of relevant economic and social characteristics (SR 69, SR 176-179. Numbers preceded by "R" refer to pages in the Record on Appeal in the New York Court of Appeals; numbers preceded by "SR" refer to pages in the Supplementary Record therein).

Figure A-1 below (SR 144) shows the welfare tax rate per thousand dollars of full taxable property value in the same counties and groups of counties. It will be noted that the taxpayers of Erie County are taxed at a rate more than double that in Nassau County.

Figure A-1
Local Welfare Tax Rate
on Full Value Taxable Property
1975



The strongly regressive character of this system of taxation may be seen in Figures A-3 (SR 146) and A-5 (SR 148) below, which show the relationship between the welfare tax rate on the one hand and per capita taxable property and per capita income on the other hand.

Figure A-3
Welfare Tax Rate vs.
Per Capita Taxable Property
1975

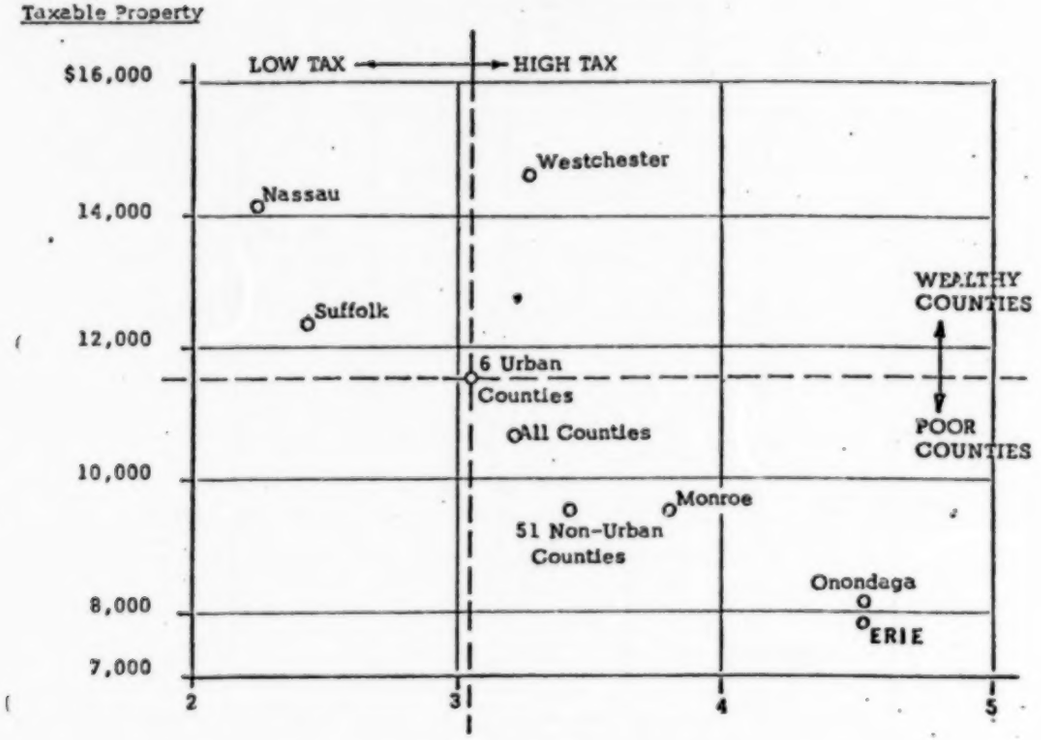


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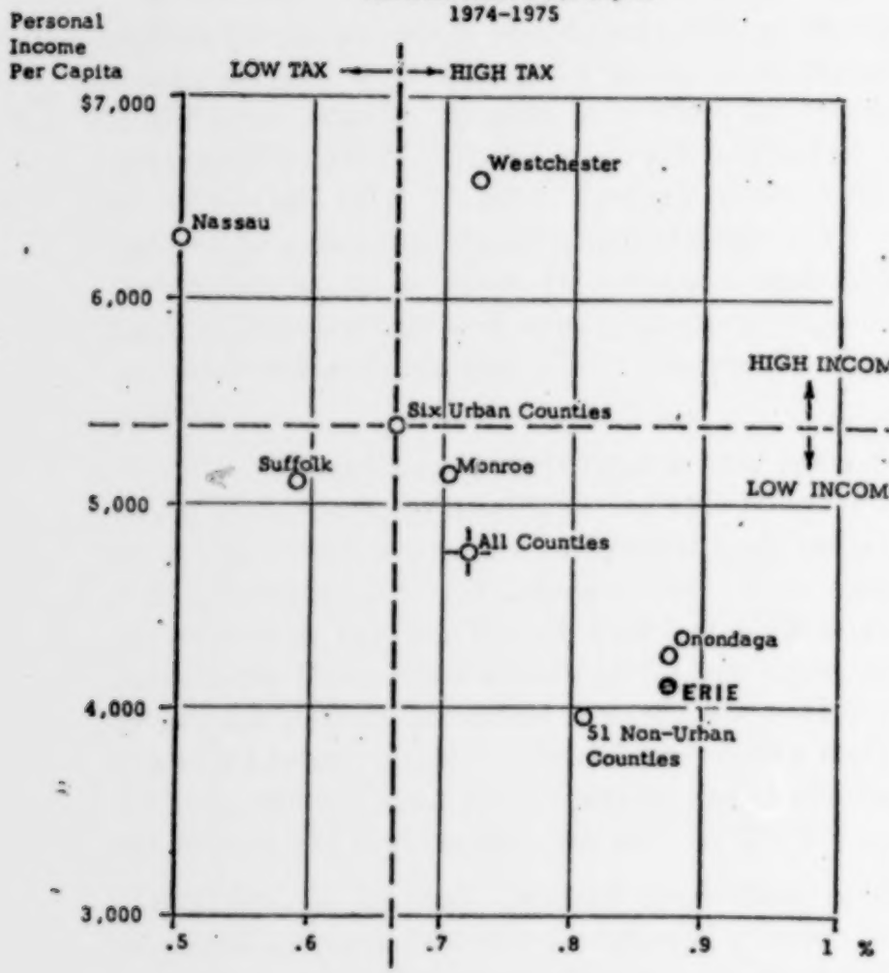
Figure A-5
Welfare Tax As Percent
of Personal Income vs.
Personal Income Per Capita
1974-1975



WELFARE TAX AS PERCENT
OF PERSONAL INCOME

In this case, the County does not demand that its local welfare burden per capita be reduced to that of the wealthiest county but only to the average of the six urban counties. This would have reduced the total local share (or increased the state share) by about $13 million in 1975, and somewhat more in 1976 (SR 127). If Erie County's share were to be reduced to a level equivalent to the average of all counties, the amount would be about $11.8 million, again using 1975 figures. The total cost to the state, assuming similar relief to all disadvantaged counties would amount to about $53.7 million.

Welfare expenditures in Erie County have risen rapidly in recent years. Gross expenditures (including federal and state as well as county share) have increased from $40 million in 1965 to an estimated $195 million in 1976. In the same period the local share has risen from $12 million to an estimated $60 million. By 1976 welfare accounted for well over one-half of gross county expenditures (SR 158-159). The county share has consumed an increasing fraction of the county's real property tax levy, amounting in 1976 to $60 million as compared to a tax levy of $85 million (SR 168, par. 26; SR 172, par. 33).

Increases in the state-imposed local costs of the four programs in question have been especially severe in the last three years. From 1973 to the first quarter of 1976, the local cost of Medical Assistance rose 49.5% (SR 135, 150). In the same period the per capita cost of the local share of ADC rose from $8.83 to $21.84 (SR 135, 151) and the per capita cost of Home Relief rose 217.2% (SR 135-136, 153).

In 1976, these rapidly rising costs gave rise to a crisis in county government, leading to reduction of the number of county employees by more than 15% in one year (SR 160, par. 8; 163, par. 11; 164, par. 12) and the prospect of elimination

or drastic reduction in essential municipal services such as libraries, parks, and mental health services (R 29-31, par. 18, 19, 20, 24; R 235). This crisis also impaired the county's standing in municipal financial markets raising doubt as to whether the county would be able to avert a default on its short term indebtedness (SR 166, pars. 17, 19, 20; SR 168, par. 27;* R 31, par 26; R 674).

The County's ability to raise real property taxes to meet increasing welfare costs is constrained not only by legal tax limits but by economic considerations. Additional taxes will add incentives to industry to choose other locations and to move from Erie County to communities not burdened with disproportionate welfare costs, thereby aggravating an already serious loss of employment in the County (SR 137-138; R 30, pars. 21, 22, 23; R 679). The unequal welfare burden imposed on Erie County taxpayers has placed the County in a vicious circle, in which tax increases to meet rising welfare costs lead to furtl.er losses of employment and still greater welfare costs (R 30-31; pars. 22, 23; SR 136).

In mid-1976 the County was about to exhaust appropriations for the four welfare programs involved. To fund expenditures through thes rest of the year it became necessary to transfer funds from other appropriations or to borrow funds by issuing budget notes. When it appeared that, in order to precipitate a test case, the County Legislature might refuse to take such action, and the state Commissioner of Social Services brought a proceeding in the nature of mandamus to compel the Legislature and other county officials to provide funding.

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* After the case was decided, the County recently adopted a budget which, it appears, will provide for a real property tax increase of approximately 39 or 40%, with a more severe cutback of government functions than was originally anticipated. The precise amount of tax increase and extent of service cuts is still unresolved at the time of submission of this statement.

By affirmative defense and counterclaim, appellants alleged in their answer and amended answer that the statutes involved violate the due process and equal protection clauses of the Fourteenth Amendment. On the basis of those allegations, among others, appellants moved for temporary relief requiring appellees to provide funding for the local as well as the state share of the costs of the four welfare programs pending determination on the merits of the validity of the statutes. The New York Supreme Court (the court of first instance) granted such relief. After a hearing on the merits, however, that Court expressly sustained the validity of the statutes, holding in part:

> "Does the imposition of the costs in question on the County of Erie violate the rights of the County, its taxpayers, and the beneficiaries of its services to due process and equal protection of the law as guaranteed by the state and federal constitutions? This Court thinks not." (App. p. 40a).
>
> • • •
>
> "The Court concludes that the Social Services Law of New York is rational for the reasons stated in *Lindsay* and also because we believe that having the local government contribute in part to the cost gives that division of government the incentive to more properly administer the program in an efficient manner, and it is not invidious and does not violate the Equal Protection Clause for the Due Process Clause of the United States Constitution." (App. p. 43a)

Upon appeal the Appellate Division (the intermediate appellate court) affirmed the decision of the Supreme Court (54 A.D. 2d 46, App. 9a-25a). With reference to appellants' challenge to the validity of the statutes under the Fourteenth Amendment, it ruled:

"The final constitutional argument raised by the county officials is that the continued imposition of 50% of the non-Federal cost of welfare on the local governments results in a denial of the county's equal protection and due process rights under the State and Federal Constitutions. Here the county officials assert that due to Erie County's shrinking tax base and its high proportion of welfare recipients, the rigid 50% State-wide assessments results in an unequal and discriminatory cost for the tax payers of Erie County when compared to five other major urban counties outside New York City." (p. 53, App. p. 21a)

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"Traditionally, the cost of public assistance has been deemed to be primarily a local burden. Thus, although eligibility and benefit standards are set by the State, and funding scheme implemented by the Social Services Law is not in the nature of an assessment against local revenues to finance a State program. Rather it is an attempt by the State to provide both State and Federal Funds to subsidize an admittedly local obligation." (p. 54, App. p. 22a)

• • •

"With respect to the county officials' due process argument, all that "due process demands [is] that a law be not unreasonable or arbitrary and that it be reasonably related and applied to some actual and manifest evil (Matter of Jacobs, 98 N.Y. 98, 100; Fisher Co. v. Woods, 187 N.Y. 90; Nebbia v. New York, 291 U.S. 502)." (Defiance Milk Prods. Co. v. Dumond, 309 NY 537, 541, supra; see, also Montgomery v. Daniels, 38 NY2d 41.) For the reasons set forth under our analysis of the equal protection issue we find that the challenged provisions of the Social Services Law are rationally related to the effectuation of the general policy concerning the "aid, care and support of the needy" as contained in section 1 of article XVII of the New York State Constitution." (p. 55, App. p. 23a, 24a)

• • •

"Although alternative systems may result in a more equal and fairer distribution of limited public funds and in a more efficient administration of the welfare system, this does not mean that the system presently provided by law is violative of any provision of the Federal or State Constitutions." (p. 56, App. p. 24a)

Appellants then appealed from the decision of the Appellate Division to the Court of Appeals, the highest court of the State of New York, which affirmed the order of the Appellate Division (40 N.Y. 2d 837, App. p. 5a-8a). The Court of Appeals held in part:

"Erie County and its officials here involved urge that those provisions of the Social Services Law which effect a 50 percent contribution of the nonfederal outlay for said public assistance programs by the county (see Social Services Law, §§52, 61, 69, 88, 92[1], 93[3] [6], 153[1], 368-a[1], 410-c[1] of title 5, art. 6) are unconstitutional in denying equal protection and due process under the United States and New York State constitutions, in violating the right of county residents to effective self-government and home rule and in that they will result in the imposition of local taxes in excess of the limit set by the State Constitution.

"As to the claimed invalidity under the Federal Constitution, the decision in *Lindsay v. Wyman* (372 F Supp 1360, affd sub nom *Beame v. Lavine*, 419 US 406), upholding the constitutionality of the Social Services Law against an attack that the division of the State of New York into social services districts achieves an unequal and discriminatory distribution of the burden of public assistance costs and payments in the State, conclusively negates the Erie County position. Likewise, the county's

reliance on corresponding provisions of the State Constitution fails because of the persuasive authority in *Lindsay* (see also *Montgomery v. Daniels*, 38 NY2d, 61)." (p. 838, App. p. 6a, 7a)

* * *

"We concur in the determination at the Appellate Division on the analysis and for the reasons set forth in the opinion of Mr. Justice Reid S. Moule with the foregoing added comments." (p. 839, App. p. 8a)

The Question Presented is Substantial

The federal question is substantial in terms of both public interest and legal doctrine. At issue is the validity of New York State's method of financing the enormous cost of four welfare programs, Home Relief, Aid to Dependent Children, Medical Assistance, and Day Care. In our Statement of the Case we have briefly described the inequality of the statutes in question, the disproportionate taxes imposed upon the people of Erie County, and the effects of this disproportionate burden in perpetuating a cycle of increasing regional unemployment and depriving the people of the County of essential municipal services.

In *Royster Guano v. Virginia*, 253 U.S. 412 (1920), this court held a tax invalid under the equal protection clauses on the ground that:

". . . the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike . . ." (253 U.S. at 415)

In the present case, the unequal impact of the statutes in question is incontrovertible.* The only question is whether this serious and destructive inequality can be justified by any rational basis. We submit that the State's determination to impose one-half of the non-federal costs of welfare on county governments, without regard to widely varying needs and resources, is arbitrary and without rational basis in the strictest meaning of those terms. The effect is a highly regressive distribution of costs and taxes. The State discriminates against the poorer counties for no better reason than that they happen to have large concentrations of poor people, and the State discriminates against the taxpayers of these counties for no better reason than that they happen to live in poorer rather than richer communities.

The courts below held the discriminatory impact of the statutes in question to be justified on two grounds: that the imposition of 50% of the non-federal costs of the programs provides an incentive to efficient administration; and that public assistance is a local obligation. Both grounds are deficient in law, in fact, and logic.

Efficiency of administration does not justify denial of equal protection. The incentive must be rationally related to

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* The State does not dispute that Erie County bears a disproportionate burden in comparison to the other urban counties or to all counties of the state. It does assert that Erie County is not aggrieved because it does not bear a disproportionate burden in relation to the entire state *including New York City*, in which the local costs of welfare are imposed not on county governments but on the city. However, as pointed out in *Lindsay v. Wyman*, 372 F. Supp. 1360 (1974), affirmed without opinion *sub nom. Beame v. Lavine*, 419 U.S. 806 (1974), New York City has extraordinary wealth and taxing powers and is not fairly comparable to the counties. See discussion in text below at page 23. Moreover, the State cannot justify a denial of equal protection to the people of Erie County on the ground that it treats another community still more inequitably.

the goal to be achieved. The statutes in question impose a disproportionate burden on the poorer counties regardless of their efficiency. Even if a proportionate local share could be justified as an incentive to sound administration, this would not logically justify a disproportionate share, and it is the disproportionate burden cast upon Erie County that we challenge in this case. See *Rinaldi v. Yeager,* 384 U.S. 305 (1966).

Justification of the unequal burden imposed on Erie County and other poorer communities on the ground that public assistance is a local obligation is fallacious on three counts.

First, it ignores historical developments that have entirely undercut any such justification. Since the Depression of the 1930's welfare has been transformed from a local to a state and federal responsibility. The Social Security Act of 1935, which governs all of the programs in question except Home Relief, plainly establishes primary State responsibility for a uniform state-wide program complying with federal standards. In 1938, New York amended its constitution:

> "to establish clearly that the provision of public relief is mandated as a matter of state concern and responsibility."
> (*Welfare, Health and Mental Health,* Report of the Temporary State Commission on the Constitutional Convention of 1967, volume 11, page 15; see generally pages 10-16.)

The State exercises exclusive control over the two crucial determinants of welfare costs, eligibility standards and benefit levels. It supervises administration down to the smallest detail, and every case is subject to review by the State.

Under the New York Constitution and the Social Security Act, the State may assign part of its responsibility for welfare to its local governments, but it is the State that must make that determination, and it is the State that bears ultimate responsibility for assuring that the needs of the poor are met.

A second fault in this justification is that it is irrelevant. Whether the state is deemed to be discharging its own responsibilities or to be assisting the local governments, its determinations as to funding of welfare must comport with constitutional principles. When the State assumed power to make decisions as to the costs and benefits of welfare programs it became responsible for those decisions. Prior to that, inequalities could be justified as a natural consequence of the devolution of governing power to local communities of inevitably varying needs and resources. But when the State itself took control of the crucial resource allocation functions, it necessarily negated that justification by eliminating local self-government.

The disparities of needs and resources among the counties are obvious. When the State assumed and exercised the power to determine how to distribute the costs of welfare, it could not ignore those facts. The State could not, in order to finance welfare or any other program, impose an explicit and direct tax on its citizens at unequal and regressive rates depending on their county of residence. Neither can it do so by using county governments, to which it has granted no control over the matter, as the formal taxing mechanism.

It is important to emphasize that we are not complaining of intermunicipal disparities that necessarily result from the devolution of governmental power to communities of varying endowments. We do not contend that the State must compensate for such disparities. Here the costs in question are not

imposed by the local government; they are imposed by the State. We contend only that when the State itself makes a determination it must do so with due regard to the Constitution. It must extend equal protection to all of its citizens.

Implicit in the opinions below is the notion that the State is not obligated to bear any part of the costs of welfare, and that it may therefore provide reimbursement to the local governments on any terms and conditions it sees fit, without regard to constitutional principles. That notion amounts to no more than a variant of the old right-privilege doctrine, which has been thoroughly discredited and repudiated as a mode of analysis for disposing of cases involving constitutional rights. *Elrod v. Burns*, ... U.S. ...., 96 S.Ct. 2673 at 2683-2684 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Schapiro v. Thompson*, 394 U.S. 618, 627 (1968).

The third fault in the attempt to justify the inequitable and destructive effect of the statutes by labelling the responsibility for welfare as local is that the argument is essentially circular. The only basis on which welfare can today be considered a local function is that the statutes in question impose part of the cost on the localities. It is precisely this imposition that the County has placed in issue. The issue cannot logically be resolved by saying that since costs are imposed on the localities, the function is local, and since the function is local, the imposition of costs is valid.

The substantiality of the question presented by this case is vividly demonstrated by comparing it to the most relevant decision of this Court, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). In that case the Court sustained a system of financing public education that depended in part upon local tax resources and consequently resulted in disparities of expenditures per pupil among districts on the

ground that the system "permits and encourages a large measure of participation in and control of each district's schools at the local level" (411 U.S. 1, 49). In the present case the State has not preserved or encouraged local autonomy over welfare expenditures; it has eliminated local autonomy and substituted state for local control. Thus, the rationale of the *Rodriguez* decision leads to the conclusion that the inequities perpetrated by the State's system of financing welfare are unconstitutional.

A similar effect is obtained by comparing the present case to *Lindsay v. Wyman*, 372 F. Supp. 1360 (1974), affirmed without opinion *sub nom. Beame v. Lavine*, 419 U.S. 806 (1974), a decision heavily relied upon by the courts below. In that case, New York City challenged the state's decision to use the city as a social service district with administrative and fiscal responsibilities. This choice was arbitrary, the city argued, because the city had far more welfare recipients than other welfare districts. Rejecting the claim, the Court stressed the far greater per capita wealth and taxable resources of New York City over other areas in the State, which enabled it to carry the welfare burden better than some alternative district.* Indeed, relief to the City would impose a heavier

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* New York City is empowered to levy a broad array of special taxes borne not by City residents but by commercial and other visitors and by national business enterprises which spread the cost throughout the national economy. For example, the City levies taxes on earnings of non-residents (Laws of New York, 1966, chapters 774, 779) and financial corporations (New York Tax Law § 1201(a); N.Y. City Administrative Code § B46-1.0 *et seq.*); and in 1974, 58.1% of the City's property valuation was commercial and industrial as compared to 28.8% in Erie County (Exhibit R-13, Table H-32, p. 188). In addition, New York City receives extraordinary federal and state subsidies. As stated by the court in *Lindsay*, the Legislature "may recognize that the greater property values in the City of New York and its greater per capita wealth enable it better to carry its burden of welfare", 372 F. Supp. at 1367.

burden on poorer counties in the state. The claim in this case takes no issue with the choice and use of Erie County as a social service district, nor does it seek to cast a fiscal burden on poorer counties. It seeks only an alteration in the state fiscal formula to take account of variations in local resources and welfare outlays so that poorer districts do not bear a disproportionate financial burden. *Lindsay v. Wyman* did not adjudicate that claim. To the extent that it relied upon the extraordinary resources enabling the City to bear a disproportionate welfare burden, the *Lindsay* decision points to a contrary conclusion in the present case, where it has been demonstrated that Erie County is not richer but poorer in the necessary resources.

Conclusion

This case presents an issue of serious concern to the people of Erie County and other poorer communities in the State of New York and an issue of considerable significance in the evolution of judicial theory as to state discrimination among its citizens based upon their residence in different local jurisdictions.

Respectfully submitted,

WILLIAM E. STRAUB,
Acting County Attorney, Erie County,
Attorney for Appellants,
25 Delaware Avenue—7th Floor,
Buffalo, New York 14202.

James L. Magavern,
of Counsel.

APPENDIX "A".

Amended Notice of Appeal to the Supreme Court of the United States.

STATE OF NEW YORK
SUPREME COURT—County of Erie

EDWARD V. REGAN, Individually and as County Executive of Erie County; RAYMOND F. GALLAGHER, as Chairman of the Erie County Legislature; ALFREDA W. SLOMINSKI, as Comptroller of Erie County; FRED J. BUSCAGLIA, as Commissioner of the Erie County Department of Social Services; ERIE COUNTY LEGISLATURE, COUNTY OF ERIE and BARRY VAN LARE,

Appellants,

against

PHILIP L. TOIA, Individually and as Commissioner of the New York State Department of Social Services; HUGH L. CAREY, Individually and as Governor of the State of New York; ARTHUR LEVITT, Individually and as Comptroller of the State of New York; JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York; PETER GOLDMARK, Individually and as Director of the Budget of the State of New York; THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, and PEOPLE OF THE STATE OF NEW YORK,

Appellees.

Index No. E-31391

Sirs:

PLEASE TAKE NOTICE that the above-named appellants hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York the order of the Appellate Division of New York State, Fourth Department, which judgment of the Court of Appeals was entered in this proceeding on September 17, 1976.

Appendix "A"—Amended Notice of Appeal to the Supreme Court of the United States.

This appeal is taken pursuant to 28 U.S.C. § 1257 (subd. 2).

Dated: Buffalo, New York,
December 10, 1976.

WILLIAM E. STRAUB,
Acting Erie County Attorney,
James L. Magavern,
of Counsel,
Attorneys for Appellants,
25 Delaware Avenue,
Buffalo, New York 14202.

To:

Honorable Genevieve Starosciak,
Clerk of Erie County,
25 Delaware Avenue,
Buffalo, New York 14202.

Honorable Joseph W. Bellacosa,
Clerk, Court of Appeals of New York,
Court of Appeals Hall,
Albany, New York 12207.

Honorable Louis J. Lefkowitz,
Attorney General of the
State of New York,
Attorney for Appellees,
The Capitol,
Albany, New York.

John M. Dufur, Esq.,
Assistant Attorney General
of the State of New York,
Of Counsel,
Justice Building,
Albany, New York.

(Filed Erie County Clerk's Office December 10, 1976—10:12 A.M.)

APPENDIX "B".

Notice of Appeal to the Supreme Court of the United States.

STATE OF NEW YORK
SUPREME COURT—County of Erie

EDWARD V. REGAN, Individually and as County Executive of Erie County; RAYMOND F. GALLAGHER, as Chairman of the Erie County Legislature; ALFREDA W. SLOMINSKI, as Comptroller of Erie County; FRED J. BUSCAGLIA, as Commissioner of the Erie County Department of Social Services; ERIE COUNTY LEGISLATURE; and COUNTY OF ERIE,

Appellants,

against

PHILIP L. TOIA, Individually and as Commissioner of the New York State Department of Social Services; HUGH L. CAREY, Individually and as Governor of the State of New York; ARTHUR LEVITT, Individually and as Comptroller of the State of New York; JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York; PETER GOLDMARK, Individually and as Director of the Budget of the State of New York; and THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES,

Appellees.

Index No. E-31391

Sirs:

PLEASE TAKE NOTICE that the above-named appellants hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York affirming the order of the Appellate Division of New York State, Fourth Department, which judgment of the Court of Appeals was entered in this proceeding on September 17, 1976.

Appendix "B"—Notice of Appeal to the Supreme Court of the United States.

This appeal is taken pursuant to 28 U.S.C. § 1257 (subd. 2).

Dated: Buffalo, New York,
October 15, 1976.

JAMES L. MAGAVERN,
Erie County Attorney and
Attorney for Appellants,
25 Delaware Avenue,
Buffalo, New York 14202.

To:

Honorable Genevieve Starosciak,
Clerk of Erie County,
25 Delaware Avenue,
Buffalo, New York 14202.

Honorable Joseph W. Bellacosa,
Clerk, Court of Appeals of New York
Court of Appeals Hall,
Albany, New York 12207.

Honorable Louis J. Lefkowitz,
Attorney General of the
State of New York,
Attorney for Appellees,
The Capitol,
Albany, New York.

John M. Dufur, Esq.,
Assistant Attorney General
of the State of New York,
Of Counsel,
Justice Building,
Albany, New York.

(Filed Erie County Clerk's Office October 18, 1976—4:35 P.M.)

APPENDIX "C".

Decision of the New York State Court of Appeals.

In the Matter of PHILIP L. TOIA, as Commissioner of the New York State Department of Social Services, *et al.*, Respondents, v EDWARD W. REGAN, as County Executive of Erie County, *et al.*, Appellants. (And Another Proceeding.)

Argued September 13, 1976; decided September 17, 1976

Social services—funding of public assistance programs—imposition of 50% of non-federal costs upon county.

Matter of Toia v Regan,—AD2d—, affirmed.

APPEAL, by permission of the Appellate Division of the Supreme Court in the Fourth Judicial Department, from an order of that court, entered September 10, 1976, which (1) unanimously affirmed a judgment of the Supreme Court (Roger T. Cook, J.), entered in Erie County in a proceeding pursuant to CPLR article 78, granting a petition to compel officials of Erie County to provide funds necessary for the administration of the home relief, aid to dependent children, medical assistance and day care programs in that county, and (2) directed the county officials to reimburse the State for funds advanced pursuant to any prior court orders.

James L. Magavern, County Attorney, and *John J. Barone* for appellants.

Louis J. Lefkowitz, Attorney-General (*John M. Dufur* and *Ruth Kessler Toch* of counsel), for respondents.

Appendix "C"—Decision of the New York State Court of Appeals.

Per Curiam. This is an appeal from an unanimous affirmance by the Appellate Division of a judgment of the Supreme Court which, in pertinent part, ordered certain Erie County public officers to provide necessary funds for home relief, aid to dependent children, medical assistance and day care programs in said county and denied relief under a petition, asserted by way of counterclaim, which sought a declaration of invalidity in respect to provisions of the Social Services Law subjecting Erie County to a 50% burden of the non-Federal costs of said programs.

Section 1 of article XVII of the New York State Constitution mandates that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by each of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." Erie County and its officials here involved urge that those provisions of the Social Services Law which effect a 50% contribution of the non-Federal outlay for said public assistance programs by the county (see Social Services Law, §§ 52, 61, 69, 88, 92, subd 1; § 93, subds 3, 6; § 153, subd 1; § 368-a, subd 1; § 410-c, subd 1 of tit 5, art 6) are unconstitutional in denying equal protection and due process under the United States and New York State Constitutions, in violating the right of county residents to effective self-government and home rule and in that they will result in the imposition of local taxes in excess of the limit set by the State Constitution.

As to the claimed invalidity under the Federal Constitution, the decision in *Lindsay v Wyman* (372 F Supp 1360, affd *sub nom. Beame v Lavine,* 419 US 806), upholding the

Appendix "C"—Decision of the New York State Court of Appeals.

constitutionality of the Social Services Law against an attack that the division of the State of New York into social services districts achieves an unequal and discriminatory distribution of the burden of public assistance costs and payments in the State, conclusively negates the Erie County position. Likewise, the county's reliance on corresponding provisions of the State Constitution fails because of the persuasive authority in *Lindsay* (see, also, *Montgomery v Daniels,* 38 NY2d 41, 61).

Although section 10 of article VIII of the State Constitution contains a limitation on the amount to be raised by a county by tax on real estate, the Appellate Division, finding that it was not proven that Erie County is currently taxing property at the maximum allowable rate, rejected the constitutional argument in this respect on inadequacy of proof.

It is contended that the cost of public assistance in 1976 amounts to 56% of Erie's total budget and that the statutory straitjacket, requiring the local expenditure of one half of the non-Federal expenses for public assistance, severely limits the availability of sufficient tax revenues for traditional county services, thus rendering meaningless the county's right to manage its own affairs (see, generally, NY Const, art IX). The applicable statutes of the Social Services Law are, however, general laws (NY Const, art IX, § 3, subd [d], par 1) and the State Legislature has the "power to act in relation to the property, affairs or government of any local government*** by general law" (NY Const, art IX, § 2, subd [b], par [2]). To that extent general laws, on the present showing, are controlling.

Appendix "C"—Decision of the New York State Court of Appeals.

We concur in the determination at the Appellate Division on the analysis and for the reasons set forth in the opinion of Mr. Justice Reid S. Moule with the foregoing added comments. Accordingly, the order of the Appellate Division should be affirmed, without costs.

Chief Judge Breitel and Judges Jasen, Gabrielli, Jones, Wachtler, Fuchsberg and Cooke concur in *Per Curiam* opinion.

Order affirmed.

APPENDIX "D".

Decision of the New York State Supreme Court, Appellate Division, Fourth Department.

In the Matter of Philip L. Toia, as Commissioner of the New York State Department of Social Services, *et al.*, Respondents, v Edward V. Regan *et al.*, Appellants (And Another Proceeding.) (Appeal No. 1.)

In the Matter of Philip L. Toia, as Commissioner of the New York State Department of Social Services, *et al.*, Appellants, v Edward V. Regan *et al.*, Respondents. (Appeal No. 2.)

Edward V. Regan, Individually and as County Executive of Erie County, *et al.*, Respondents, v Philip L. Toia, Individually and as Commissioner of Social Services of the State of New York, *et al.*, Appellants. (Appeal No. 3.)

Fourth Department, September 10, 1976

Social services—funding of public assistance programs—imposition of 50% of non-Federal costs upon county.

A judgment granting a petition by the Commissioner of the New York State Department of Social Services to compel officials of Erie County to appropriate funds for the administration of home relief, aid to dependent children, medical assistance and day care programs in that county, as required by provisions of the Social Services Law, which obligate the county to provide 50% of the non-Federally reimbursed costs of those programs, is affirmed. Absent evidence that the county is currently taxing real property at the maximum allowable rate, it cannot claim that the continued imposition of the 50% contribution rate upon it will

force it to impose taxes in excess of the limit set by the New York State Constitution. As to a claim by it that the continued imposition of that contribution rate interferes with its right to self government and home rule, the State Legislature may constitutionally abridge the right of local governments to home rule upon enactment of a valid general law, and the challenged statute, which applies with equal force to every local government within the State and attempts to regulate the nature and extent of State contribution to local welfare commitments, legitimately a matter of State-wide public concern, is such a general law. Nor does the continued imposition of the 50% contribution rate result in a denial of equal protection or of due process, since the 50% contribution system rationally furthers a legitimate, articulated State purpose and is rationally related to the effectuation of the general policy concerning the aid, care and support of the needy as contained in the New York State Constitution.

APPEALS from (1) a judgment of the Supreme Court (Roger T. Cook, J.), entered September 2, 1976 in Erie County in a proceeding pursuant to CPLR article 78, granting a petition by the Commissioner of the New York State Department of Social Services to compel officials of Erie County to provide funds necessary for the administration of the home relief, aid to dependent children, medical assistance and day care programs in that county, and (2) prior orders of the Supreme Court (Gilbert H. King, J.), entered August 4 and August 6, 1976 in Erie County, which, respectively, directed the State Commissioner to provide sufficient funds for the local as well as the State share of the costs of the

said programs pending the hearing and determination of a motion for a preliminary injunction, and denied a motion by him for a temporary restraining order requiring the county officials to appropriate the necessary funds.

James L. Magavern, County Attorney, for Edward V. Regan and others.

Louis J. Lefkowitz, Attorney-General (*John Dufur* and *Ruth Kessler Toch* of counsel), for Philip Toia and others.

MOULE, J. This proceeding is before the court on appeal from a judgment granting the petition of Philip L. Toia, as Commissioner of the New York State Department of Social Services, for an order under CPLR article 78 compelling the respondents, Edward V. Regan, as County Executive of Erie County; Richard J. Keane, as Chairman of the Erie County Board of Legislators; Erie County Board of Legislators; Alfreda W. Slominski, as Comptroller of Erie County; and Barry L. Van Lare, as Commissioner of the Erie County Department of Social Services, to appropriate funds for social welfare programs to be administered by the Erie County Social Services District as provided for under the Social Services Law. Special Term's judgment supersedes its earlier temporary restraining order which compelled the State Commissioner to provide interim funding for these social welfare programs pending determination of the proceeding.

Philip L. Toia, as Commissioner of the State Department of Social Services, originally commenced this article 78 proceeding by a petition and order to show cause seeking an order compelling respondents to appropriate the necessary funds

for the administration of the home relief, aid to dependent children, medical assistance and day care programs in the County of Erie after it appeared that such necessary funds would be exhausted in a matter of days. This order to show cause was returnable the morning of the day following the service of the commissioner's papers upon respondents.

A regular meeting of the County Legislature was to be held during the afternoon of the return day and the agenda for the meeting included a proposed resolution to appropriate funds for the welfare programs in question. Accordingly, after hearing preliminary arguments, Special Term adjourned the hearing until July 30.

The Legislature did not pass the resolution and further arguments were heard before Special Term on July 30. At that time petitioner renewed his motion for a temporary restraining order directing respondents to appropriate funds for the welfare programs and respondents orally moved for a temporary restraining order directing petitioner, Commissioner Toia, to provide funding for the programs pending a determination of the action. The hearing was adjourned until August 4, in order to allow respondents to submit papers in support of their motion to compel petitioner to provide interim funding of the programs, to make other motions, and, if they should deem advisable, to serve their answers at that time.

At the August 4 hearing the respondents served and handed up to the court their answer to the petition, together with affidavits and a proposed order to show cause. The answer

challenged the validity of those provisions of the New York Social Services Law that impose on all counties one half of the non-Federal cost of the welfare programs in question. In addition, the answer alleged a counterclaim by the county as a municipal corporation, the County Legislature, the County Executive and the County Commissioner of Social Services, in their individual as well as official capacities, as counterclaim petitioners against Commissioner Toia, Governor Carey, Comptroller Arthur Levitt, Budget Director Peter Goldmark, Taxation and Finance Commissioner James H. Tully, Sr. and the State Department of Social Services as counterclaim respondents. The counterclaim petitioners sought to join the additional counterclaim respondents, who had not been joined in the petition, as parties to the proceeding, and additionally sought permanent declaratory and injunctive relief, a preliminary injunction, and a temporary restraining order requiring the State Commissioner to provide funding of the unappropriated local share (as well as the State share) of the welfare programs in question, pending determination of the motion for a preliminary injunction. The petitioners and counterclaim respondents will hereafter be referred to collectively as the State Commissioner, and the respondents and counterclaim petitioners as the county officials.

On August 4, Special Term granted an order joining the additional parties as counterclaim respondents, directing the State Commissioner to show cause at hearing on September 7 why the county officials' motion for a preliminary injunction should not be granted, and directing the State Commissioner by temporary restraining order to provide funding of the

local as well as the State share of the welfare programs pending determination of the motion for a preliminary injunction. Special Term later also signed an order denying the State Commissioner's motion for a temporary restraining order requiring the county officials to provide such funding.

Immediately after entry and service of Special Term's order of August 4, which included the temporary restraining order requiring the State Commissioner to provide interim funding of the local share, the State Commissioner served and filed a notice of appeal and an affidavit of intention to move for permission to appeal from that order. On August 5 the county officials moved by order to show cause before a Justice of this court to vacate and declare void any stay of enforcement of Special Term's order claimed by the State Commissioner to have come into existence pursuant to CPLR 5519 (subd [a], par 1) by reason of the State Commissioner's notice of appeal and affidavit of intention. The State Commissioner was granted permission to appeal and the stay was vacated pending consideration by the full court on September 8. Similarly, the State Commissioner was granted permission to appeal from Special Term's order denying his motion for a temporary restraining order requiring the county officials to provide interim funding of the local share of the welfare programs, and consolidated that appeal with the appeal already pending.

Subsequently, the date of the hearing on the preliminary injunction was advanced to August 24 at which time Special Term, after conducting the hearing, reserved decision until August 30 when it granted the State Commissioner the relief he sought and denied the relief sought by the county officials. It is from such order that the county officials appeal.

In the initial proceeding the State Commissioner sought to compel the county officials to appropriate adequate funds for the administration of the home relief, aid to dependent children, medical assistance for needy persons and day care programs in the County of Erie under the Social Services Law. That the Social Services Law, as presently written, does so require the county officials to act is not seriously disputed. However, since these provisions form the core of the instant litigation, it is necessary to delineate the broad parameters of these provisions.

Erie County is a duly established county social services district (Social Services Law, § 52; § 61, subd 3). As such, it bears ultimate responsibility for the administration of public assistance and care for its residents although it may share this responsibility, under certain circumstances, with other municipalities located within its territorial boundaries (Social Services Law, § 69). An important element of this responsibility is the mandatory duty of the county's board of supervisors "to make adequate appropriations * * * to provide the public assistance and care required by * * * [the Social Services Law]" (Social Services Law, § 88). Additionally, the county is specifically obligated to make deficiency appropriations, should the need arise, to fulfill its public assistance responsibilities with regard to both home relief (Social Services Law, § 93, subds 3, 6) and the Federally-aided programs of aid to dependent children and medical assistance (Social Services Law, § 92, subd 1, pars [a], [c]). The Social Services Law does provide for reimbursement by the State for 50% of the non-Federally reimbursed cost of

these programs, including day care (Social Services Law, § 153, subd 1, pars [d], [e]; § 368-a, subd 1, par [d]; § 410-c, subd 1, par [a]). Further, the statute places the power over the administration and regulation of this system of public assistance and care largely in the hands of the State Department of Social Services and its commissioner (Social Services Law, §§ 17, 20, 34).

This legislative scheme, then, focuses day-to-day administrative duties upon the county social services districts while concentrating policy and rule-making authority in the State agency. It also establishes an affirmative burden upon the county social services districts to appropriate necessary funding for the operation of these public assistance programs but, then, eases this burden by providing for 50% State reimbursement of all such funding not otherwise subject to Federal reimbursement. Moreover, this scheme fits well within the scope of our State's Constitution's mandate that: "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine" (NY Const, art XVII, § 1.)

Despite this constitutional source of legislative authority, the county officials argue that those sections of the Social Services Law which provide that 50% of the non-Federal cost of public assistance must be borne by local governments under the circumstances presented in this case conflict with other fundamental rights and benefits conferred by the State and Federal Constitutions and must, therefore, be in-

validated. In short they allege that the 50% contribution ratio: first, will result in the imposition of local taxes in excess of the constitutional limit; second, violates the right of the county residents to effective self government and home rule; and, third, results in a denial of equal protection and due process rights under the Federal and State Constitutions.

To sustain these arguments the county officials must satisfy the heavy burden of overcoming the presumption of constitutionality which all legislative enactments enjoy *(Fenster v Leary,* 20 NY2d 309, 314; *Wiggins v Town of Somers,* 4 NY2d 215, 218; *Matter of Bronx Parkway Comm. v Hylan,* 119 Misc 785, affd 206, App Div 688, affd 236 NY 593). "While this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt" *(Wiggins v Town of Somers, supra,* p 218; see, also, *Defiance Milk Prods. Co. v Du Mond,* 309 NY 537, 541; *Matter of Fay,* 291 NY 198, 206-207).

As a procedural matter the State Commissioner seeks to raise the barriers of standing and subject matter jurisdiction against the constitutional claims sought to be litigated by the county officials. As to standing, whatever merit there may be to the State's contention that Erie County, as a creature of the State, has no privileges under the Federal Constitution which it may invoke in opposition to the will of its creator (see, *e.g., Williams v Mayor,* 289 US 36, 40 [Cardozo, J.]) the county officials, petitioning the court in their individual capacities, have that standing generally accorded by our courts to taxpayers to challenge the constitutionality of legislative enactments *(Boryszewski v Brydges,* 37 NY2d 361, 364). As to the

court's jurisdiction over the subject matter of the constitutional claims here put in conflict, we need only repeat that "the judicial process—since *Marbury v Madison* * * * [is] the classical means for effective scrutiny of legislative and executive action" *(Boryszewski v Brydges, supra,* p 364).

Turning then to the merits of the constitutional claims, the first argument raised by the county officials is that the continued imposition of 50% of the non-Federal cost of public assistance on local governments will force the county to impose taxes and expend revenues in excess of constitutional tax limits.

Section 10 of article VIII of the State Constitution provides in part that:

"the amount to be raised by tax on real estate in any fiscal year, in addition to providing for the interest on and the principal of all indebtedness, shall not exceed an amount equal to the following percentages of the average full valuation of taxable real estate * * *

"(a) any county, for county purposes, one and one-half per centum; provided, however, that the legislature may prescribe a method by which such limitation may be increased to not to exceed two per centum".

According to the county officials' argument, if the present assessment compels the county to tax real property at a rate higher than the current rate of 1.5% then the local contribution ratio provided for in the Social Services Law will result in the imposition of an oppressive and unconstitutional tax. In support of this argument the county officials sub-

mitted an affidavit from the county budget director which concluded that the county is perilously close to default on its financial commitments and that the 1977 tentative budget will require drastic cuts in spending programs as well as a substantial real property tax increase.

The county officials do not, however, either assert or prove that they are currently taxing real property at the maximum allowable rate. Indeed, an affidavit submitted by the State Commissioner from the Director of the Bureau of Municipal Research and Statistics indicates that in 1976 the county's tax assessment is approximately 34 million dollars less than the total permissible taxes of 1.5% of the real property valuation. The existence of this tax margin was not refuted by the county officials and their failure to do so, as Justice Cook pointedly noted, compels a finding that they have not sustained their heavy burden of proof on this issue. Consequently this constitutional attack must be rejected.

It is important to note that our rejection of this argument is based solely on the inadequacy of the county officials' proof. We do not reach the question of whether this argument, if properly supported by sufficient evidence, would require that the local assessment provisions of the Social Services Law be declared unconstitutional.

The second constitutional argument raised by the county officials is that the continued imposition of 50% of the non-Federal costs of welfare on local governments conflicts with the county's right to self government and home rule under article IX of the New York State Constitution. Specifically the county officials allege that the rising local cost of public

assistance, which in 1976 amounted to 56% of the total county budget, severely limits the availability of sufficient tax revenues for traditional county services and thus renders meaningless the county right to manage its own local affairs.

Implicit in the county officials' argument is the assertion that the general right to effective self government is inviolate and that the State may not pass legislation which may to some extent interfere with that right. We do not, however, agree.

Article IX (§ 2, subd [b], par [2]) of the State Constitution specifically provides that the State Legislature "[s]hall have the power to act in relation to the property, affairs or government of any local government only by general law." Thus it is clear that upon enactment of a valid general law, the State Legislature may abridge the right of local governments to home rule (see *County of Orange v Metropolitan Transp. Auth.*, 71 Misc 2d 691, 703, affd 39 AD2d 839). The propriety, therefore, of the county officials' constitutional challenge rests upon whether the Social Services Law is in fact a general law.

Article IX (§ 3, subd [d], par [1]) of the State Constitution defines a general law as "[a] law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages." In reviewing the provisions of the Social Services Law, it is apparent that that statute is a general law. It applies with equal force to every local government within the State. It attempts to regulate the nature and extent of State contribution to local welfare commitments which is legitimately a matter of State-wide public concern. Thus although this law

may indirectly touch upon the concerns of individual localities and affect their resolution, the rights of individual counties to govern their local affairs must yield to the State's legislative authority (see *City of Amsterdam v Helsby*, 37 NY2d 19; *County of Orange v Metropolitan Transp. Auth.*, 71 Misc 2d 691, 703, *supra*).

The final constitutional argument raised by the county officials is that the continued imposition of 50% of the non-Federal cost of welfare on the local governments results in a denial of the county's equal protection and due process rights under the State and Federal Constitutions. Here the county officials assert that due to Erie County's shrinking tax base and its high proportion of welfare recipients, the rigid 50% State-wide assessments results in an unequal and discriminatory cost for the taxpayers of Erie County when compared to five other major urban counties outside New York City.

In analyzing the validity of the equal protection argument, it is important to note that the Supreme Court has set forth two distinct tests, whose applicability depends upon the nature of the right infringed upon as well as the existence of a discriminatory classification (see *San Antonio School Dist. v Rodriguez*, 411 US 1). Thus, in the case of invidious discrimination, *i.e.*, where there is either a patently suspect classification or where the exercise of a fundamental constitutional right is at issue, strict judicial scrutiny is required (see *Shapiro v Thompson*, 394 US 618). However, where either or these two issues is not involved then the test is "whether [the legislative scheme] rationally furthers some legitimate,

articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment" *(San Antonio School Dist. v Rodriguez, supra,* p 17).

In the instant case, the class allegedly discriminated against consists of the taxpaying residents of Erie County. This classification is not inherently suspect (see *Lindsay v Wyman,* 372 F Supp 1360, 1366, affd *sub nom. Beame v Lavine,* 419 US 806; *State of Wisconsin ex rel. Seehawer v Schmidt,* 363 F Supp 635, 636, affd 414 US 1105) and the test of strict judicial scrutiny is therefore inappropriate. Nor do the county officials allege the violation of any of their constitutionally protected individual rights. The test, therefore, to be applied here is whether the 50% contribution system rationally furthers a legitimate, articulated State purpose.

With respect to this test, it is clear that the aid, care and support of needy persons is not only a legitimate State purpose but also one which is mandated by section 1 of article XVII of the State Constitution. Thus the sole question presented here is whether the funding ratios established by the Social Services Law rationally advance that purpose.

Traditionally, the cost of public assistance has been deemed to be primarily a local burden. Thus, although eligibility and benefit standards are set by the State, the funding scheme implemented by the Social Services Law is not in the nature of an assessment against local revenues to finance a State program. Rather it is an attempt by the State to provide both State and Federal funds to subsidize an admittedly local obligation. This analysis is further evidenced by the fact that

individual counties must initially appropriate sufficient funds to support the entire cost of local welfare, subject to later reimbursement of the respective State and Federal shares.

Inasmuch as the State's contribution to welfare may be characterized as "a grant in aid of what is at least a partial municipal obligation" *(Lindsay v Wyman,* 372 F Supp 1360, 1370, *supra),* the framework for providing such grants need not be perfect. As stated by the Supreme Court in *Dandridge v Williams* (397 US 471, 485): "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley v Natural Carbonic Gas Co.,* 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' *Metropolis Theatre Co. v City of Chicago,* 228 U.S. 61, 69-70."

Additionally, we find that the concentration of one half of the non-Federal cost at the local level rationally furthers the State's interest in providing the individual counties with a compelling incentive to administer the programs efficiently and to prevent abuses.

With respect to the county officials' due process argument, all that "due process demands [is] that a law be not unreasonable or arbitrary and that it be reasonably related and applied

to some actual and manifest evil *(Matter of Jacobs*, 98 N. Y. 98, 110; *Fisher Co. v Woods*, 187 N. Y. 90; *Nebbia v New York*, 291 U. S. 502)" *(Defiance Milk Prods. Co. v Dumond*, 309 NY 537, 541, *supra;* see, also, *Montgomery v Daniels*, 38 NY2d 41). For the reasons set forth under our analysis of the equal protection issue we find that the challenged provisions of the Social Services Law are rationally related to the effectuation of the general policy concerning the "aid, care and support of the needy" as contained in section 1 of article XVII of the New York State Constitution.

Granting the order requiring the State to fund the county's share of local welfare costs pending the outcome of the litigation and subject to reimbursement by the county in the event of the State's success was a matter of judicial discretion and did not affect the merits as to which governmental entity is ultimately responsible for these costs. The questions, however, presented to us on this appeal concern this very issue of ultimate responsibility. To this extent our determination may not be based on judicial discretion but rather must be decided on the basis of the Federal and State Constitutions as well as the applicable State statutes.

The fact that a better system of funding public assistance may be developed in no way affects the constitutionality of the system challenged here. Although alternative systems may result in a more equal and fairer distribution of limited public funds and in a more efficient administration of the welfare system, this does not mean that the system presently provided by law is violative of any provision of the Federal or State Constitutions. Since the present system has been

properly established by a legislative process, any change in it must be made through the same process and cannot be made by the courts.

The judgment appealed from should be affirmed and the county officials directed to reimburse the State for funds advanced pursuant to any prior court orders herein. Permission is granted under CPLR 5602 for leave to appeal to the Court of Appeals.

Marsh, P.J., Simons, Goldman and Witmer, JJ., concur.

Appeal No. 1—Judgment unanimously affirmed without costs and the county officials directed to reimburse the State for funds advanced pursuant to any prior court orders. Leave to appeal to the Court of Appeals granted.

Appeal No. 2—Order unanimously dismissed as moot.

Appeal No. 3—Order unanimously dismissed as moot.

APPENDIX "E".

Judgment of the New York State Supreme Court, County of Erie.

STATE OF NEW YORK
SUPREME COURT—County of Erie

In the Matter of the Application of PHILIP L. TOIA, as Commissioner of the New York State Department of Social Services, and THE PEOPLE OF THE STATE OF NEW YORK,

Petitioners.

against

EDWARD V. REGAN, as County Executive of Erie County; RICHARD J. KEANE, as Chairman of the Erie County Board of Legislators; ERIE COUNTY BOARD OF LEGISLATORS; ALFREDA W. SLOMINSKI, as Comptroller of Erie County; and BARRY L. VAN LARE, as Commissioner of the Erie County Department of Social Services,

Respondents.

For an Order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules.

EDWARD V. REGAN, Individually and as County Executive of Erie County, ERIE COUNTY LEGISLATURE; THE COUNTY OF ERIE; and BARRY VAN LARE, Individually and as Commissioner of Social Services of Erie County,

Counterclaim Petitioners.

against

PHILIP L. TOIA, Individually and as Commissioner of the New York State Department of Social Services;HUGH L. CAREY, Individually and as Governor of the State of New York; ARTHUR LEVITT, Individually and as Comptroller of the State of New York; JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York; PETER GOLDMARK, Individually and as director of the Budget of the State of New York; and THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES,

Counterclaim-Respondents.

Petitioners and counterclaim respondents having moved by petition verified July 27, 1976 and order to show cause dated July 28, 1976 for a judgment directing the respondents and

Appendix "E"—Judgment of the New York State Supreme Court, County of Erie.

counterclaim petitioners to perform the duties enjoined upon them by law by making adequate appropriations to provide funds for the home relief, aid to dependent children, medical assistance and day care programs in the County of Erie; and respondents and counterclaim petitioners herein having responded by answer and counterclaim verified August 4, 1976, and amended answer and counterclaim verified August 24, 1976 seeking judgment to dismiss the petition as to each of them; to declare the provisions of the Social Services Law void insofar as they purport to impose on Erie County one-half of the cost of the non-federal share of the cost of the medical assistance, aid to dependent children, and day care programs and one-half of the cost of the home relief program; to enjoin petitioners and counterclaim respondents from enforcing the said provisions against respondents and counterclaim petitioners; to the extent that the imposition of the said costs on Erie County is declared to be void, to declare that it is the responsibility of petitioner and counterclaim respondents to assume such costs and to provide sufficient funds for the administration of the home relief, aid to dependent children, medical assistance and day care programs in the County of Erie; to prohibit petitioner and counterclaim respondents from withholding the amount of said funds from any funds otherwise payable to the County of Erie; to provide that such order and judgment do not determine and are without prejudice to issues relating to the constitutionality of the United States Social Security Act and federal system of welfare; and the petitioners and counterclaim respondents having submitted a reply verified August 23, 1976 and a reply verified August 24, 1976 to the amended answer and counterclaim, and this Court, King, J., having granted orders dated August 4, 1976 and August 6,

1976 and the Appellate Division of the Supreme Court, Fourth Judicial Department, Moule, J., having rendered a memorandum of decision dated August 6, 1976 and having granted orders dated August 6, 1976, August 11, 1976, August 11, 1976 and August 13, 1976, and a memorandum dated August 18, 1976 ordering that a hearing be had in the Supreme Court, Erie County, on August 24, 1976, at that time the issue between the parties be fully presented to the court by the presentation of papers and taking of testimony, if necessary; granting a preference and providing that any appeal by an aggrieved party to the Appellate Division, 4th Department be heard on September 8, 1976 if record and briefs are filed with the Appellate Division on or before September 3, 1976, and this matter having duly come on to be heard on August 24, 1976.

NOW, on reading and filing the pleadings, memorandums, decisions and orders aforesaid; and on reading and filing the further pleadings, affidavits, memorandums of law and exhibits submitted by the parties hereto; and after hearing John Dufur, Assistant Attorney General of the State of New York, on behalf of the petitioners and counterclaim respondents, and after hearing James L. Magavern, County Attorney for the County of Erie, on behalf of the respondents and counterclaim petitioners; Regan, Keane, Erie County Board of Legislators, and Slominski, and after hearing John J. Barone, Esq., on behalf of respondent and counterclaim petitioner Van Lare; and due deliberation having been had; and this Court having rendered and filed a memorandum of decision dated August 31, 1976, a copy of which is hereto attached and incorporated; it is hereby

ORDERED AND ADJUDGED, that the petition of the petitioners and counterclaim respondents herein is granted, except that the order of the Honorable Gilbert H. King, Justice of the Supreme Court, dated August 4, 1976, directing, *inter alia,* the petitioners and counterclaim respondents to provide sufficient funds for the local as well as the state share of the cost of home relief, aid to dependent children, medical assistance and day care programs in the County of Erie, and prohibiting them from withholding the amount of such funds from any funds otherwise payable to the County of Erie shall continue in effect until the appeal of the order and judgment herein is determined by the Appellate Division, Fourth Department; and it is further

ORDERED AND ADJUDGED, that the relief sought by respondents and counterclaim petitioners that this judgment does not determine and is without prejudice to issues relating to the constitutionality of the United States Social Security Act of federal system of welfare is granted; and it is further

ORDERED AND ADJUDGED, that all other relief sought by the respondents and counterclaim petitioners herein is denied.

Dated: September 2, 1976

ENTER:

/s/ ROGER T. COOK,
J.S.C.

GRANTED and Order entered
in Erie County.

/s/ William G. Young,
Spec. Dep Clerk,
Chautauqua County, New York,
Dated: September 2, 1976.

APPENDIX "F".

Memorandum Decision of the New York State Supreme Court, County of Erie.

STATE OF NEW YORK
SUPREME COURT—County of Erie

In the Matter of the Application of PHILIP L. TOIA, as Commissioner of the New York State Department of Social Services, and THE PEOPLE OF THE STATE OF NEW YORK,

Petitioners,

against

EDWARD V. REGAN, as County Executive of Erie County; RICHARD J. KEANE, as Chairman of the Erie County Board of Legislators; ERIE COUNTY BOARD OF LEGISLATORS; ALFREDA W. SLOMINSKI, as Comptroller of Erie County; and BARRY L. Van LARE, as Commissioner of the Erie County Department of Social Services,

Respondents,

For an Order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules.

EDWARD V. REGAN, Individually and as County Executive of Erie County, ERIE COUNTY LEGISLATURE; THE COUNTY OF ERIE; and BARRY VAN LARE, Individually and as Commissioner of Social Services of Erie County,

Counterclaim-Petitioner,

against

PHILIP L. TOIA, Individually and as Commissioner of the New York State Department of Social Services; HUGH L. CAREY, Individually and as Governor of the State of New York; ARTHUR LEVITT, Individually and as Comptroller of the State of New York; JAMES H. TULLY, JR., Individually and as Commissioner of Taxation and Finance of the State of New York; PETER GOLDMARK, Individually and as Director of the Budget of the State of New York; and THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES,

Counterclaim-Respondents.

Appendix "F"—Memorandum Decision of the New York State Supreme Court, County of Erie.

LOUIS J. LEFKOWITZ, Attorney General (John M. Dufur of counsel) for Petitioners and Counterclaim-Respondents.

JAMES L. MAGAVERN, Erie County Attorney for all Respondents & Counterclaim-Petitioners except BARRY L. VAN LARE.

JOHN J. BARONE, Attorney for Barry L. Van Lare.

ROGER T. COOK, *J.*

Petitioners (hereinafter referred to as the State) are Philip L. Toia, Commissioner of the New York State Department of Social Services, and the People of the State of New York, seeking an order and judgment pursuant to Article 78 of the Civil Practice Law and Rules that the action of the respondents in failing to appropriate necessary funds for the administration of the home relief, aid to dependent children, medical assistance and day care programs in the County of Erie, is in violation of the provisions of the New York State Constitution and Social Services Law and that they (the respondents) be directed forthwith to provide necessary funds for the administration of the same.

The respondents Edward V. Regan, Erie County Executive, Richard J. Keane, Chairman of the Erie County Board of Legislators, the Erie County Board of Legislators, Alfreda W. Slominski, Erie County Comptroller and Barry L. Van Lare, as Commissioner of the Erie County Department of Social Services, answer with a counterclaim against petitioners and others in the title to this decision individually and as officials and departments of the State of New York, seeking as counterclaim-petitioners and respondents (hereinafter referred to as the County):

(1) to dismiss the petition as to each of them;

(2) to declare the provisions of the Social Services Law void insofar as they purport to impose on Erie County one-half of the cost of the non-federal share of the cost of medical assistance, aid to dependent children, and day care programs and one-half of the cost of the home relief program;

(3) to enjoin petitioners from enforcing the said provisions against respondents;

(4) to the extent that the imposition of the said costs on Erie County is declared to be void, to declare that it is the responsibility of counterclaim respondents to assume such costs and to provide sufficient funds for the administration of the home relief, aid to dependent children, medical assistance and day care programs in the County of Erie;

(5) to prohibit counterclaim respondents from withholding the amount of said funds from any funds otherwise payable to the County of Erie;

(6) to provide that such order and judgment do not determine and are without prejudice to issues relating to the constitutionality of the United States Social Security Act and federal system of welfare;

(7) the granting to respondents and counterclaim petitioners such other and further relief as may be proper.

This hearing was ordered for August 24, 1976 by Hon. Justice Reid S. Moule on behalf of the Appellate Division,

Fourth Department, for full presentation and determination so that an aggrieved party may perfect an appeal on or before September 3, 1976.

The threshold issue concerning the standing of the County to bring this counterclaim is resolved in their favor.

The Court recognizes existing decisions that require personal aggrievement or specific damage in one who attacks constitutionality of a statute (*St. Clair v. Yonkers Raceway,* 13 NY2d 72, 242 NYS2d 45; *Donohue v. Cornelius,* 17 NY2d 390, 371 NYS2d 231).

Similarly the Court is aware of *Police Benevolent Assoc. v. Board of Trustees,* 21 AD2d 693, 250 NYS2d 523, allowing an Article 78 proceeding to attack constitutionality or validity of an ordinance or acts of a local officer under State Law even though he does not show personal grievance or interest in the outcome.

Recently some Courts have taken the position that if the matter at bar was an issue of general public interest there was standing. *Empire Electrical Con. Assoc. v. Tabber,* 71 Misc 2d 167, 335 NYS2d 540; *Ofenbach v. Gagnot,* 320 NYS2d 362; *Matter of Andrews v. Nagourney* (A.D.), 342 NY2d 79.

The Federal Courts have also eased the interest requirements in taxpayer suits. *North West Residence Assoc. v. HUD,* 325 F Supp 65 (D.C., Wis.); *Shannon v. HUD,* 305 F Supp 205 (D.C., Pa.); *Commissioner of Mass. v. Mellon,* 262 US 447.

It accordingly is the opinion of this Court that the County herein include in their numbers those persons, bodies or cor-

porations with the right to invoke the constitutional function which the courts properly exercise to rule on the consitutionality of a statute.

Board of Education v. Allen, 51 Misc 2d 297, revd 27 AD2d 69, affd 20 NY2d 109, affd 392 US 236; *Boryszewski v. Brydges*, 37 NY2d 361.

At the plenary hearing on August 24, 1976 in Part XV of Supreme Court, Buffalo, New York, the parties by and through their respective attorneys presented their oral arguments and presented written pleadings, affidavits and exhibits containing an estimated 5,000 pages of material, the evidence marked being approximately 35 items in all. No sworn testimony was offered.

Commensurate with the time afforded since the hearing to the date of this memorandum this Court has, in meeting the schedule established by the above Appellate Division order, weighed the allegations of the parties and finds the issues of the State to include the right to relief under Article 78 CPLR to an order adjudging respondents in violation of New York State Constitution and Social Services Law provisions and a direction to the County to forthwith provide funds for the programs of home relief, aid to dependent children, medical assistance and day care as well as the issues raised in the counterclaim and amended counterclaim of the County, to dismiss petition of the State, declare provisions of the Social Services Law void insofar as they apply to this litigation, enjoin petitioners from enforcement of the same, declare that the State pay the costs for assistance it or they try to impose on the County, prohibit the State from using other funds allegedly due the County to cover these costs and provide that

any order hereunder is without prejudice to the County's litigating constitutionality of the United States Social Security Act and federal system of welfare. That all said issues are partially controverted as between the parties by virtue of affidavits and exhibits found in the evidence as above recited.

The Southwick and Dunn affidavits in evidence on behalf of the County make claims as to welfare inequity among New York State Counties of Erie, Onondaga, Monroe, Westchester, Suffolk and Nassau and categorize these six as large urban counties appropriate to compare, comment on the impact of the welfare increases in Erie County, recite reasons why the property tax is related to welfare costs, allege that mandated Social Services expenditures have (a) led to a reduction in Erie County Bond ratings, (b) impaired its ability to borrow funds, (c) increased costs to borrow funds, (d) forced elimination of 1600 workers in 1976, (e) forced cut back of vital services in all areas of county government, (f) brought the county perilously close to being unable to meet financial commitments and (g) will require drastic cuts in the 1977 Budget coupled with a substantial real property tax increase. The prediction is made, on alleged knowledge and assumptions recited, that within two or three years the Erie County Budget will be only a funding plan for mandated services and fixed expenditures.

The State submitted affidavits of Jean Wickert indicating Erie County has not reached its constitutional real property tax limit; of Miles D. Storfer indicating Erie County's proportion of the costs of the local share of public assistance and care is not excessive in comparison to Erie County's proportion of the value of taxable real property in New York

State stating specifically that, "[a]lthough Erie County had 4.65 percent of the 1974 total taxable real property valuation, it had to provide only 2.91 percent of the statewide total of the local shares of public assistance and care costs"; of Hugh O'Neill indicating that if the State of New York assumed financial responsibility for the local share of such costs, the costs of such programs to Erie County taxpayers would actually increase; of Sheldon Joffe indicating the magnitude of the financial responsibility placed upon the State of New York by the order temporarily requiring it to pay the local share of assistance pending determining of this proceeding; of John Wiley indicating the statewide ramifications of the order temporarily directing the State to pay the local share of assistance and of Blanche Bernstein summarizing reasons why partial local funding of welfare programs is required including (1) the strong incentive for local welfare districts to administer their programs in the most efficient manner, (2) transfer to the State, previously rejected by the voters, would be years in the transition, and (3) that the local funding of one dollar brings an additional approximate two dollars into the locality representing an enormous economic benefit to the locality.

By letter dated and delivered August 25, 1976, the County Attorney devotes time to argument of a special situation he ascribes to New York City and in general discusses the claims ascribed to the Bernstein affidavit above.

The Court has attempted to compare affidavits to see if any meet issue by issue squarely. Apparently they were drawn without this convenience to the bench in mind. There is some match-up between Southwick for the County and Storfer and

Wickert for the State and Dunn for the County and O'Neill and Joffe for the State. Taken *in toto* neither party seems to open a large gap over the other factually or in the area of credibility.

The Court comments that proof by affidavit is more easily met and controverted by another affidavit of equal quality than the testimony of a witness whose veracity and qualifications is subject to cross-examination by an adversary and the opportunity for the trier of the facts to observe and weigh the weight to be given to the testimony. This Court finds that the burden of proof to be carried by the County on the questions of constitutionality and validity of the Social Services Law, as to the factual issues controverted, has not been carried. Nonetheless, the Court because of the magnitude of this case proceeds to a decision of the constitutional issues before it.

The issues of constitutionality and validity raised by the County includes the question, does the Social Services Law, which results in the County paying benefits to its needy at a level set by the State, deprive the County and its people of their rights to effective local self-government and a locally elective legislative body?

The Court first looks to the New York State Constitution, Article IX, § 1, Bill of Rights of Local Governments, to determine if any of the eight enumerated powers therein can be seen to be specifically infringed upon by the Social Services Law.

This Court can find no infringement on their rights to have an elected legislator or elected officers which is claimed by

the County, nor indeed do we find any of the other rights therein specifically violated.

Next, we turn to the broad question of whether or not the Social Services Law deprives the County of effective local self-government in violation of Article IX, § 2, of the New York State Constitution.

In this regard it is helpful to consider the historical burden of caring for the needy. The Court cites directly from *Lindsay v. Wyman*, 372 F Supp 1360, p 1369, where it was said:

> "The history of social welfare makes it quite clear that assistance to the needy has been the primary responsibility of the immediate locality. The English Poor Laws of the 16th and 17th Century, the first acceptance of governmental responsibility for the needy, were based on the principle that the 'impotent poor' must be relieved in and at the cost of the local community, 27 Henry VIII, c.25, §§ 4, 21; 4 Holdsworth, History of English Law 392-94 (1923). We turn our attention first, then, to its history in the State of New York.
>
> "Until 1824, relief of the poor in New York State was a matter for private charities and local governments at their option, although general state laws provided the legal framework for local governmental units' jurisdiction (Fensterstock, History of New York Social Welfare Legislation, McKinney's Social Welfare Law pp. IX-XVIII; Schneider, The History of Public Welfare in New York State, 1609-1866, University of Chicago Press, 1938 pp. 1-210). Thereafter, County responsibility for the poor was established as a State goal but in fact in many

> Counties the localities still bore the major responsibility (Fensterstock, *supra*, at pp. XVIII-XXIII; Schneider, *supra*, at pp. 233-53). While a Board of State Commissioners of Public Charities was established in 1867 and many laws followed which established state-wide policies regarding the care of sick, disabled and poor, no state monies were disbursed until the Depression.
>
> "By 1929, responsibility for relief of poverty had been placed clearly on the County governments and on several Cities including New York (Schneider and Deutsch, The History of Public Welfare in New York State, 1867-1940, University of Chicago Press, 1941 pp. 285-86).
>
> "The gradual elimination of non county districts continued until 1972 when all were eliminated except for New York City which completely contains five counties and has no effective County Government (L. 1972 ch. 28)."

We therefore start out with the common law concept of care for the needy being a local (county) problem. The Social Services Law reflects that belief and is an apparent attempt to relieve that burden rather than increasing it.

The broad powers claimed by the County to be violated by the State must be contained in Article IX, § 2, of the Constitution, if at all. A close reading thereof indicates that the legislature "(2) shall have the power to act in relation to the property, affairs or government of any local government only by general law . . ." "(3)(c)(i) every local government shall have power to adopt and amend local laws not *inconsistent* with the provisions of this constitution or any *general law*

relating to its property, affairs or government . . ." (emphasis added).

Article IX, § 3, defines "General Law" as "[a] law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages." (N.Y. Const., Art. IX, § 3, subd d, par [1]. The Social Services Law is a law which in terms and in effect applies alike to all counties and therefore is a "General Law". Since the Social Services Law is a "General Law", ". . . the . . . local government (County of Erie) must yield to the dictates of . . . these legislative enactments". See *City of Amsterdam v. Helsby*, 37 NY2d 19, p 27.

The additional issues of constitutionality and validity raised by the County are:

Does the imposition of the costs in question on the County of Erie violate the rights of the County, its taxpayers, and the beneficiaries of its services to due process and equal protection of the law as guaranteed by the state and federal constitutions? This Court thinks not.

As to any violation of the Federal Constitution, we turn to *Lindsay v. Wyman*, 372 F Supp 1360, affd 419 US 806. The County cites and asks this Court to rely on *City of N.Y. v. Richardson*, 473 F2d 923 (2 Cir 1973), cert den 412 US 950. In point of fact, *City of N.Y. v. Richardson, supra*, is one and the same case as *Lindsay v. Wyman, supra*. The remand in effect set aside any determination on the merits by *City of N.Y. v. Richardson*. We find *Lindsay v. Wyman* determinative of the issues raised under the Federal Constitution.

The *Lindsay* case was a challenge to Social Services Law, which divided the State of New York into Social Services districts and in so doing allegedly achieved an unequal and discriminating distribution of the burden of public assistance costs and payments in the State, and the imposition of local taxes.

In general, the net effect of the federal-state programs is that aid in federally assisted programs paid as follows: Federal Revenue: 50%; State Revenue: 25%; Local Revenue: 25%.

The City of New York noted it had 45% of the State population and was responsible for 74% of the State's welfare burden. That it was expending $151.47 per inhabitant as against the balance of the State paying $44.23 per inhabitant. The conclusion was that New York City bears a heavier share of the welfare cost than the rest of the State. Nonetheless, the Court in *Lindsay* decided the Social Services Law was not unconstitutional.

The reasoning in *Lindsay* was that the Equal Protection Clause goes no further than to forbid "invidious discrimination". See *Williamson v. Lee Optical Co.*, 348 US 483, 489, 75 SCT 461.

To determine whether there is *invidious discrimination*, there must be a finding of a *class* on which that discrimination is practiced.

If the class purportedly the subject of discrimination is a suspect class (*i.e.*, black children, needy persons, women, etc.) or a fundamental constitutional right is at issue (see *Shapiro v. Thompson*, 394 US 618, 634, 89 SCt 1322) strict

judicial scrutiny may be required. But if there is no *suspect class*, and no fundamental constitutional right is at issue, the Supreme Court has told us that the test is simply "whether it [the legislative scheme] rationally furthers some legitimate, articulate state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. *San Antonio Independent School District et al. v. Rodriguez*, 411 US 1, 17; 93 SCt 1278, 1288.

The Court in *Lindsay* found the *class* could not be welfare recipients since each gets the same payment throughout the state. It concluded that the *class* was the taxpayers of the City of New York and the test to be applied under *San Antonio, supra*, is whether the scheme "rationally furthers some legitimate, articulated state purpose". As the Court said in *Jefferson v. Hachney*, 406 US 535, 546, 92 SCt 1724, 1731, 32 LED 285 (1972): "So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straight jacket."

The Court in *Lindsay* then discussed the New York State Social Services Law and found "there is a rational justification for the Social Services Law". The Court in *Lindsay* said, "History teaches and logic does not rebut, that care of the needy is, at least in part, a function of local government. The scheme of social welfare is, hence, a cooperative effort between State and City [here the County of Erie], as it is between the State and Federal Governments. If reimbursement by the State is considered as State Aid, as reimbursement to the states is considered Federal Aid, then the

amount of such aid is a matter for legislative determination." (page 1372). It found reason also in the economic benefit to the City for the vast sum reimbursed by the State to the City.

As to due process, the Court said in *Lindsay:* "[s]ince the class which is the proposed object of discrimination is the City's residents in the aggregate [herein the County of Erie's residents in the aggregate] *qua* taxpayers, we must also be reminded that '[t]he Due Process Clause of the Fifth Amendment does not protect taxpayers against increases in tax liability . . .' *Flast v. Cohen*, 392 US 83, 105, 88 SCt 1942, 1955. Nor is there a claim here, as there was in *Flast v. Cohen, supra*, that the expenditure itself violates a specific constitution prohibition. In this regard, this Court thinks the same test is to be applied to claims of discrimination under the Equal Protection Clause of the Fourteenth Amendment as under the Due Process Clause of the Fifth Amendment. This Court returns, therefore, to the concept of rational justification." In other words, due process cases are treated the same as equal protection cases when the class in question is the taxpayer. The reasons which sustain the legislation under equal protection likewise sustain it under due process.

The Court concludes that the Social Services Law of New York is rational for the reasons stated in *Lindsay* and also because we believe that having the local government contribute in part to the cost gives that division of government the incentive to more properly administer the program in an efficient manner, and is not invidious and does not violate the Equal Protection Clause or the Due Process Clause of the United States Constitution.

We turn now to the question of whether the Social Services Law violates the Equal Protection Clause and Due Process Clause of the New York State Constitution.

As to the Due Process Clause, we find no violation thereof and rely on the reasoning in *Montgomery v. Daniels*, 38 NY2d 41, to reach that conclusion.

The Court in *Montgomery* said:

> "[i]n *West Coast Hotel Co. v. Parrish* (300 US 379, 391) the United States Supreme Court stated that 'regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process'. Thus where a statute is challenged on nonprocedural grounds as violative of due process of law we have consistently asked the question whether there is ' " 'some fair, just and reasonable connection' between it and the promotion of the health, comfort, safety and welfare of society." ' (*Nettleton Co. v. Diamond*, 27 NY2d 182, 193, app dsmd *sub nom. Reptile Prods. Assn. v. Diamond*, 401 US 969; *People v. Pagnotta*, 25 NY2d 333, 337; *People v. Bunis*, 9 NY2d 1, 4; *Defiance Milk Prods. Co. v. DuMond*, 309 NY 537, 541.) In approaching this question, the court has recognized that as a matter of substantive law every legislative enactment is deemed to be constitutional until its challengers have satisfied the court to the contrary (*People v. Broadie*, 37 NY2d 100, 117; *People v. Pagnotta, supra; Matter of Van Berkel v. Power*, 16 NY2d 37, 40; *I.L.F.Y. Co. v. Temporary State Housing Rent Comm.*, 10 NY2d 263, 269, app dsmd 369 US 795). 'There is generally a very strong presumption that "the Legislature

> has investigated and found the existence of a situation showing or indicating the need for or desirability of the legislation" ' (*Matter of Taylor v. Sise*, 33 NY2d 357, 364, quoting *Matter of Van Berkel v. Power, supra;* and see *People v. Broadie, supra*)." *Montgomery v. Daniels, supra*, p. 54.

With the presumption of constitutionality in mind, we ask (1) was the state in enacting the Social Services Law acting in pursuit of a permissible state objective? The Court finds the answer to be in the affirmative.

As stated in the New York State Constitution, Art. XVII, § 1, "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature from time to time determine." The care of the needy is dictated by the Constitution and is deemed a permissible state objective.

(2) Were the means adopted reasonably related to the accomplishment of those objectives? Again the Court finds the answer to be in the affirmative. See *Lindsay v. Wyman, supra.*

As to the Equal Protection Clause of the New York State Constitution, we find that the Social Services Law does not violate the Equal Protection Clause of the New York State Constitution.

The County argues that the Court of Appeals in *Alevy v. Downstate Med. Center*, 39 NY2d 326, changed the traditional two-tiered approach to equal protection. This Court does not agree.

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The Court in *Alevy* said, "[t]herefore, we do not feel constrained to apply either traditional test [*i.e.*, strict judicial scrutiny—reasonable basis] but instead are ready to adopt middle ground tests *in situations where review is warranted* (cf. *Montgomery v. Daniels*, 38 NY2d 41, 61, *supra*)." (page 334).

The *Alevy* case was a reverse discrimination case. The case before this Court is a case, as argued by the County, of taxpayer discrimination. As such we find it to fit into the *Montgomery* mold and not into the *Alevy* mold.

In the *Montgomery* case at page 61, the Court reasoned as follows:

> "[t]here is here then no occasion to apply the strict scrutiny standard of review. Nor, indeed, is there any occasion to determine the details of the standard for testing constitutionality where the right sought to be vindicated might be found to call for a test somewhere along the sliding scale between strict scrutiny at one end and rational basis at the other (cf. *San Antonio School Dist. v. Rodriguez*, 411 US 1, 70-135 [dissenting opn of Mr. Justice Marshall]; *Vlandis v. Kline*, 412 US 441, 458 [concurring opn of Mr. Justice White]; *Jimenez v. Weinberger*, 417 US 628, 632; *Stanton v. Stanton*, 421 US 7 see Gunther, The Supreme Court, 1971 Term—Forward: In Search of Evolving Doctrine on a Changing Court—A Model for a Newer Equal Protection, 86 Harv L Rev 1). We here apply the traditional equal protection test as expressed in *Dandridge v. Williams* (397 US 471, 485): 'In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the

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> classifications made by its laws are imperfect. If the classification has some reasonable basis, it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ' The decisions of our courts have adopted the same test. (*Gleason v. Gleason*, 26 NY2d 28, 41; *Bauch v. City of New York*, 21 NY2d 559, 607, cert den 393 US 834; *Bucho Holding Co. v. Temporary State Housing Rent Comm.*, 11 NY2d 469, 477.) Thus it becomes apparent that the scrutiny to be applied to plaintiffs' equal protection claims here is similar to that which we have applied to the claims which they ground in due process, and many of the considerations and conclusions which there obtained are equally applicable here."

The reasoning therefore is the same or similar to that which has gone heretofore and we find the classification to be the taxpayers of Erie County and adopt the reasoning in the *Lindsay* case, *supra*, as setting forth reasons in addition to reasons stated by this Court that satisfy the *"reasonable basis"* test.

As an aside, while there may be imperfections in the whole system of federal-state and local funding of the Social Services Law no specific suggestion has been made to this Court of a more rational solution. This Court is of the opinion that if a better way exists it should come from the political process and not from this Court. It is reported that in 1967, the New York State Constitutional Convention passed a resolution to make major changes to the assistance provisions to transfer the total responsibility of local governments in the Social

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Welfare area to the State over a ten-year period. It was defeated at the polls. It may be time to try for a gradual transfer again and every effort of legislative and executive branches of federal and state governments be importuned to make this program a subject of serious study for national concern and take over.

This Court denies all relief sought by the County except (6) "that such order and judgment do not determine and are without prejudice to issues relating to the constitutionality of the United States Social Security Act and federal system of welfare", which is granted. The relief sought by the State is granted except that the order of the Hon. Gilbert H. King, Justice of the Supreme Court, dated August 4, 1976, directing, *inter alia,* "the counterclaim respondents [the State] to provide sufficient funds for the local as well as the state share of the cost of home relief, aid to dependent children, medical assistance and day care programs in the County of Erie, and are prohibited from withholding the amount of such funds from any funds otherwise payable to the County of Erie" shall continue in effect until the appeal of the order under this decision is determined by the Appellate Division, Fourth Department, of the State of New York.

Submit order.

Dated: August 31, 1976,
Buffalo, New York.

ROGER T. COOK,
Roger T. Cook,
Justice of Supreme Court.

APPENDIX "G".

Statutes Involved.

§ 62. *Responsibility for public assistance and care*

1. Subject to reimbursement in the cases hereinafter provided for, each public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself.

* * *

§ 69. *Responsibility for public assistance and care in a county public welfare district*

The responsibility for the administration of public assistance and care in a county public welfare district and the expense thereof may either be borne by the county public welfare district or be divided between such district and the towns and cities therein as hereinafter provided.

1. Unless otherwise determined by the board of supervisors as hereinafter provided, each town shall be responsible for the expense of providing home relief for local charges residing or found in such town.

2. Unless otherwise determined by the board of supervisors as hereinafter provided, a city forming a part of a county public welfare district shall be responsible for the expense of providing home relief for any local charge residing or found in its territory.

3. A county public welfare district shall be responsible for the expense of providing all assistance and care for local charges residing or found in a town or city in its territory for which such town or city is not responsible under the

provisions of subdivisions one and two of this section, and for the assistance and care of any state charge found in its territory. The expense of such assistance and care granted by a county public welfare district shall be subject to reimbursement by the state or another public welfare district in the cases provided for by section sixty-two or by any other provision of this chapter.

§ 88. Responsibility for adequate appropriations

It shall be the duty of the board of supervisors of a county, the town board of a town and the appropriating body of a city to make adequate appropriations and to take such action as may be necessary to provide the public assistance and care required by this chapter.

§ 90. Appropriations in county public welfare districts

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2. The legislative body of a city forming part of a county public welfare district shall appropriate the amount it considers necessary for administration and public assistance and care in such city and shall cause taxes to be levied for the amount of such appropriation.

Nothing contained in this section shall be construed to prevent the financing of any such expenditure, in whole or in part, pursuant to the local finance law.

3. The board of supervisors shall appropriate, in the manner provided by law, the amount it considers necessary for the ensuing fiscal year for the various forms of public assistance and care and administrative expenses in the county

public welfare district and shall cause the necessary taxes to be levied therefor in the territory of the county public welfare district.

§ 93. Provisions for financing home relief

1. Definitions. When used in this section:

(a) Home relief means home relief as defined in section one hundred fifty-seven and also includes all administrative expenses of home relief.

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2. Estimates and appropriations. Each county, city and town shall make an annual estimate and appropriation of the total amount required for the fiscal year for home relief in accordance with this article. Such estimates shall show not only the total amount so required, but the estimated state aid to be received, and the estimated local share of home relief.

3. Additional appropriations to supply deficiencies in the annual appropriations. Should the sum or the aggregate of the sums appropriated or amounts available and authorized to be expended in any county, city or town be less than the amount required in any year for home relief, supplemental appropriations may be made from time to time, and in that case not less than the same percentage of the local share of home relief included in such supplemental appropriations may be raised by taxes levied for the next fiscal year as would have been raised by taxes for the current fiscal year if the amount of supplemental appropriation had been contained in the annual appropriation for the current fiscal year.

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6. County taxes. County taxes for the payment of obligations and interest thereon, issued for home relief shall be a charge upon the entire county but shall be levied in the first instance against all the taxable property in the territory in which the county public welfare district is responsible for the administration of such home relief.

§ 131-a. Monthly grants and allowances of public assistance

1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall, in accordance with the provisions of this section and regulations of the department, provide home relief, veteran assistance and aid to dependent children, to needy persons who constitute or are members of a family household, who are determined to be eligible in accordance with standards of need established in subdivision two. Provision for such persons, for all items of need, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall be made in accordance with this section. Such provision shall be made in monthly or semi-monthly allowances and grants within the limits of the schedules included in subdivision three of this section except for additional amounts which shall be included therein for shelter, fuel for heating, additional cost of meals for persons who are unable to prepare meals at home and for other items for which specific provision is otherwise made in article five. As used in this section the term "shelter" may include a grant not to exceed seven hundred fifty dollars toward the purchase of an interest in a cooperative. A social services official shall require assignment of recipient's equity in such cooperative housing in accordance with the rules of the board and regulations of the department.

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§ 153. Reimbursement and advances by the state

1. Expenditures made by social services districts, cities and towns for public assistance and care and its administration, pursuant to this chapter, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows:

There shall be paid to each such district, city or town

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(d) fifty percentum of the amount expended for public assistance and care for local charges, after first deducting therefrom any federal funds properly received or to be received on account thereof;

(e) fifty percentum of the amount expended for administration of public assistance and care to state and local charges, after first deducting therefrom any federal funds properly received or to be received on account thereof. The provisions of this paragraph shall not be applicable to expenditures for administration expressly provided for in paragraph e;[1]

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§ 157. Definitions

As used in this title.[1]

1. Home relief means allowances pursuant to section one hundred thirty-one-a for all support, maintenance and need, and costs of suitable training in a trade to enable a person to become self-supporting, furnished eligible needy persons in accordance with applicable provisions of law, by a municipal

corporation, or a town where home relief is a town charge, to persons or their dependents in their abode or habitation whenever possible and includes such relief granted to veterans under existing laws but does not include hospital or institutional care, except as otherwise provided in this subdivision, or aid to dependent children or medical assistance for needy persons granted under titles ten and eleven, respectively, or aid to persons receiving federal supplemental security income payments and/or additional state payments. Home relief may also include tuition fees and other costs of suitable training in a trade or occupation furnished pursuant to section one hundred fifty-nine-a to an eligible person to enable him to become self-supporting or to increase his earning capacity. Home relief may also be provided in a family home or boarding home, operated in compliance with the rules of the board and regulations of the department, and on and after January first, nineteen hundred seventy-four, in facilities in which a person is receiving family care or residential care, as those terms are used in title six of article five of this chapter, and to persons receiving care in a facility supervised by the office of drug abuse services or in a residential facility for the mentally disabled approved, licensed or operated by the department of mental hygiene, other than those facilities defined in section 7.15 of the mental hygiene law, when such type of care is deemed necessary. Payments to such homes and facilities for care and maintenance provided by them shall be at rates established pursuant to law and regulations of the department. The department, however, shall not establish rates of payment to such homes or facilities without approval of the director of the budget.

2. State aid means payments to a municipal corporation by the state for home relief furnished in accordance with this title.

3. Municipal corporation shall mean a county or city except a county wholly within a city.

§ 344. Responsibility

1. Each public welfare district shall be responsible for providing aid to dependent children, under this title, to persons eligible therefor who reside in its territory. Temporary absence, within or without the state, of such persons from such territory, shall not affect their eligibility for such aid.

2. Aid shall be construed to include services, particularly those services which may be necessary for each child in the light of the particular home conditions and his other needs.

3. Each social services district shall administer the aid, care and services provided under this title, and those provided by it under title three of article six of this chapter as child welfare services, in accordance with state and federal requirements.

§ 356. Moneys to be provided by counties and cities; how expended

1. The legislative body of each public welfare district shall annually appropriate to the commissioner of public welfare such sum as may be needed for aid to dependent children, and for the administration thereof. When the assistance for which such public welfare district is responsible is administered, pursuant to title three-a of article three, by a

public welfare official who is not an officer of the public welfare district for which the appropriation is made, all or part of the sum appropriated shall be made available to such other officer and to the municipality of which he is an officer, in the manner, and at such times, as is required by other provisions of this chapter. The legislative body of the public welfare district shall include such sums in the taxes to be levied for such public welfare district.

2. Allowances granted for aid to dependent children shall be paid out of moneys appropriated or otherwise made available to the public welfare district.

3. Expenditures for allowances and administrative expenses under this title shall be a charge upon the county or city public welfare district.

§ 365. Responsibility for assistance

1. Subject to supervision by the department: (a) Each public welfare district shall furnish medical assistance to the persons eligible therefor who reside in its territory, except to persons for whom another public welfare district would be responsible under the provisions of paragraphs (b), (c) or (d) of subdivision five of section sixty-two and other provisions of this chapter, and except to persons for whom provision is made hereinafter in subdivision two. Temporary absence, within or without the state, of such persons from such territory shall not affect their eligibility for such assistance;

(b) each public welfare district shall also be responsible for furnishing medical assistance to eligible persons found in its territory, who are temporarily in the state;

(c) each public welfare district, in any case in which the appropriate medical care and services are not available within

such district, shall make appropriate arrangements, including the provision of transportation, for obtaining such medical care and services outside such district;

(d) each public welfare district may furnish all or any part of the medical assistance required to be furnished pursuant to this title, either directly or by contract or agreement.

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§ 368-a. State reimbursement

1. The department shall review the expenditures made by social services districts for medical assistance for needy persons, and the administration thereof, before making reimbursement.

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There shall be paid to each such district

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(d) fifty per centum of the amount expended for medical assistance furnished under this title to other eligible persons, and for the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof.

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§ 410. Day care; when public welfare official to furnish

1. A public welfare official of a county, city or town is authorized, provided funds have been made available therefor, to provide day care at public expense for children

residing in his territory who are eligible therefor pursuant to provisions of this title. Such care may be provided only in cases where it is determined, under criteria established by the department, that there is a need therefor because of inability of the parents to provide care and supervision for a substantial part of the day and that such care is in the best interest of the child and parent. Where the family is able to pay part or all of the costs of such care, payment of such fees as may be reasonable in the light of such ability shall be required.

2. The furnishing of such care is hereby declared to be a proper municipal purpose for which the monies of a county, city or town may be raised and expended. A county, city or town may receive and expend monies from the state, the federal government or private individuals, corporations or associations for furnishing such care.

§ *410-c.*[1] *State reimbursement*

1. (a) Expenditures made by counties, cities, and towns for day care and its administration, and day care center projects, pursuant to the provisions of this title, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows: There shall be paid to each county, city or town (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) fifty per centum of its expenditures for day care and its administration and day care center projects, after first deducting therefrom any federal funds received or to be received on account thereof, and any expenditures defrayed by fees paid by parents or by other private contributions.

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